

2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 13-13098-reg

6 | In the Matter of:

8 SOUNDVIEW ELITE LTD., et al.,

10 | Debtors.

18 | August 6, 2014

19 | 10:22 AM

21 | B E F O R E:

22 HON. ROBERT E. GERBER
23 U.S. BANKRUPTCY JUDGE

1
2 Motion Filed By Gerti Muho To Remove Chapter 11 Trustee,
3 Dismiss this Action, and Other and Further Relief
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2 A P P E A R A N C E S :

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7

8 BY: WILLIAM J. HINE, ESQ.

9 CORINNE BALL, ESQ.

10

11

12 UNITED STATES DEPARTMENT OF JUSTICE

13 Office of the United States Trustee
14 201 Varick Street
15 Room 1006
16 New York, NY 10014

17

18 BY: RICHARD MORRISSEY, ESQ.

19

20

21 ALSO PRESENT:

22 GERTI MUHO, pro se

23 ALPHONSE FLETCHER, Fletcher Asset Management
24 (Telephonically)

25 GEORGE LADNER, Fletcher Asset Management (Telephonically)

1 P R O C E E D I N G S

2 THE COURT: Okay. I'll take Soundview next. I want
3 to get appearances and then I want everybody to sit down. I
4 have some preliminary comments.

5 MR. MUHO: Your Honor, Gerti Muho, pro se.

6 THE COURT: All right. Mr. Muho.

7 MR. HINE: Your Honor, William Hine from Jones Day.
8 We represent Ms. Corinne Ball, the trustee for the Soundview
9 estates.

10 THE COURT: Right, Mr. Hine.

11 MR. MORRISSEY: Richard Morrissey for the U.S.
12 Trustee.

13 THE COURT: All right. Gentlemen, sit down.

14 I've read the briefs and I have some reactions,
15 probably stronger reactions than I usually do. Mr. Muho,
16 Section 305 of the Code, one of the two sections you're relying
17 on requires a motion for 305 dismissal or abstention to be not
18 just in the interest of the debtor but also of the creditors.
19 I cannot for the life of me see how removing the trustee, who
20 is an independent fiduciary looking out for the creditors in
21 the face of not just allegations but stuff that I have already
22 in the record by affidavit about the removal of the two million
23 dollars could ever in a thousand years be found to be in the
24 interest of the creditor community.

25 On the second issue, the removal of the trustee, I

1 have the same overriding concern but apart from that, your
2 opponents make some very, very strong showings on collateral
3 estoppel and on laches. The creditor community has been
4 justifiably relying on the action of the trustee to go to bat
5 for them in this case and on the propriety of filing, I've
6 already ruled on it and it's law of the case.

7 Now the liquidators who had opposed the propriety of
8 the filing here lost that issue but they understood it and
9 respected it. And the proceedings before me weren't in secret.
10 So I've read your papers. I'll hear what you have to say to
11 supplement the papers and then I'll let Mr. Hine respond to the
12 extent he considers appropriate.

13 And Mr. Morrissey, you have statutory rights to be
14 heard. I don't know if you personally have a dog in this fight
15 or not but I'll give you a chance to be heard, too but let me
16 hear first from you, Mr. Muho; main lectern please.

17 MR. MUHO: Thank you, Your Honor for reading
18 everything I read -- I wrote. 305, interest of the creditors
19 and of the equity holders, I may have emphasized the equity
20 holders; that's not -- that's both because I may have
21 overlooked the interest of the creditors (A), but more
22 importantly, I must -- much more importantly -- much, much more
23 importantly it's because the creditor and the only creditor
24 that appeared here was Pasig Ltd.

25 Pasig Ltd., I have mountains of proof that would show

1 the Court beyond any reasonable doubt that is nothing but the
2 alter ego of Citco Group Ltd. Citco Group Ltd., failing to
3 disclose that itself, defrauded this Court -- defrauded this
4 Court which is unfortunate but it is also significant --
5 there's significant amounts of assets at state (sic) which I
6 would foresee the need for them to fail to disclose such a key
7 part that Pasig is Citco, Citco is Pasig and there is no other,
8 you know -- there's no other --

9 I mean, we're dealing -- I mean -- and this is just
10 going a little more than I have to but we're dealing with
11 experts or leaders in the corporate identity shift and -- shift
12 game which means that Citco, Pasig -- Citco Trading Inc. which
13 doesn't exist and none of them will ever have told you that,
14 including this trustee or Buddy or anyone else, that doesn't
15 exist. It was a false entity created in order to maintain the
16 secondary investors under fifteen percent, which would then req
17 -- which would then not necess -- not necessitate them being
18 disclosed as part owners, something Buddy was afraid of because
19 they could have stolen his control because if they didn't
20 appear as creditors, then only Buddy appeared as owner, even
21 though he used 20 million from the Fletcher -- from the
22 Louisiana Pension Funds to buy that.

23 So the idea -- well, the Citco Trading Inc. was
24 created to give it an extra fifteen percent. By giving Citco
25 Trading Inc. fifteen percent, Buddy's stake was lowered so by

1 consequently, the secondary investors which were Izzy Engra --
2 Izzy Islander fifteen billion dollar hedge funds and others
3 were pushed under the ten percent reporting mark for banks.

4 So alter egos -- alter egos are just everywhere.

5 There are documents creating alter egos just in case dating
6 back to 2004. It's almost impossible to distinguish between
7 entities that existed in 2004 and they didn't. Citco, Buddy,
8 JPMorgan -- JPMorgan -- JPMorgan was a big part of it.

9 That's why for me to focus on a creditor which even if
10 I were to lose this hearing, I would come back here and ask to
11 subordinate for damages that they've done to the estate, is a
12 reason why I did not focus on them. They're the primary
13 creditor.

14 THE COURT: Pause please, Mr. Muho. You contended in
15 your papers that you had standing because you were the one
16 authorized to make decisions on behalf of the debtor. Do you
17 contend that you're also a creditor?

18 MR. MUHO: I -- if I were to lose this case, I would
19 have significant claims against the estate. I have not filed
20 those claims because (A) I did not have notice, (B) even if I
21 had notice, I had guards blocking me from -- hypothetical
22 guards blocking me from coming here and (C) because I felt that
23 it would be illegal or illegitimate or less than -- less than a
24 full integrity for my side to come in and recognize a
25 bankruptcy which was itself a farge (sic) to steal; something

1 illegal in my opinion or if not illegal, since I'm not a
2 lawyer, something less than, you know -- something that sits
3 right in my stomach at night.

4 THE COURT: All right. Would you now please turn to
5 the issues of law of the case, collateral estoppel and laches?

6 MR. MUHO: Fraud on the Court, Your Honor. Fraud on
7 the Court. Fraud on the Court. You cannot come in here -- Mr.
8 Harvey, I mean, obviously his community service has run out, so
9 he no longer feels that he can come here without pro bono and
10 advocate for Soundview Elite as he did earlier when he was
11 freezing my accounts without expectation of any pay. He's no
12 longer here.

13 He defrauded this Court. The attorneys that filed
14 this motion, Porzio, they saw a little child. They saw
15 somebody who you normally be carrying their bags. They said we
16 can do whatever we want.

17 Chevron, I read this case recently -- against Chevron,
18 Peaton (sic) -- Patton Boggs and a lot of these players, a lot
19 of the community as they themselves called it, they -- a judge
20 found, a district judge found in New York, they had committed
21 massive, massive fraud against Chevron, the oil supplier. I,
22 at best, a word supplier. So it -- is it -- is it -- their
23 lack of appearance itself goes to that plus to the proof that
24 they came in here without authority, without -- without
25 integrity, without -- without honor, without anything and come

1 here and say that the -- Your Honor, the case in Delaware is
2 over. That is just a despicable, disgusting lie that not only
3 an officer of the Court shouldn't tell but anyone on the street
4 should not tell. That case was not over. I mean I can go into
5 that case but I'd rather not since I wasn't even a party to it.

6 THE COURT: All right. Thank you.

7 Mr. Hine?

8 MR. HINE: Your Honor, I don't feel the need to
9 reiterate everything we've argued in our brief. I think the
10 Court has an understanding. I would point out that the
11 impropriety that Mr. Muho is now alleging are the very things
12 that the trustee is investigating here. We're looking into the
13 propriety of prior transactions, so I don't think that's a
14 basis for removing her.

15 And I would also note that we view this motion as
16 nothing more than an attempt to retaliate against our efforts
17 to collect the two million dollars that Mr. Muho took from the
18 estate which we're now trying to do. So I think the Court has
19 ample understanding of our papers. If you have any questions
20 for me, I'm prepared to sit down and rely on our papers, Your
21 Honor.

22 THE COURT: No. No, thank you.

23 Mr. Morrissey, do you have a position to be heard on
24 this?

25 MR. MORRISSEY: Your Honor, we moved for the

1 appointment of a Chapter 11 trustee for a reason and the reason
2 is that the financial transactions involving the Fletcher
3 entities in general, and the Soundview entities in particular,
4 had to be investigated by an independent party, an independent
5 fiduciary. That is exactly what we have in Ms. Ball and that's
6 how we should continue with this Chapter 11 case. I don't see
7 any reason to move the Chapter 11 trustee.

8 THE COURT: All right. Thank you.

9 Mr. Muho, you have a right to reply which means that
10 you have a right to respond to anything new that Mr. Hine or
11 Mr. Morrissey said but not to say points that you could have
12 made the first time. If you want to come up, you may.

13 MR. FLETCHER: Your Honor, Mr. Fletcher would also
14 like to comment.

15 THE COURT: Oh, Mr. Fletcher? All right. Why don't
16 you be heard before Mr. Muho. Mr. Muho, you can stand there
17 but I'll hear from you, Mr. Fletcher.

18 MR. FLETCHER: Thank you, Your Honor. I don't think
19 it's necessary to contradict various of Mr. Muho's statements
20 which the record shows to be false but I do think that Mr.
21 Morrissey's comments requires a response, that he said that
22 transactions involving Fletcher needed to be investigated.

23 As Your Honor will recall during the five-day trial
24 after extensive discovery and extensive production from the
25 Soundview debtors, multiple counsel were unable to prove the

1 allegations which the debtors characterized from the start as
2 false. In most Chapter 11 cases, I understand there are
3 various allegations but it's an extraordinary remedy to appoint
4 a trustee and in this case where we had the benefit of a trial,
5 and that trial failed to prove the allegations, I think it's
6 reasonable to say that there were -- in this case, unlike many
7 others, it's not reasonable to conclude that there were
8 transactions that needed to be further investigated. They were
9 thoroughly investigated and tried and heard.

10 Importantly, one other element of these motions is the
11 allegation that I've made that this trustee is not a
12 disinterested person. I realize that it's Mr. Morrissey's
13 team's responsibility to identify a trustee and confirm the
14 lack of disinterestedness and to motion the Court but the
15 delayed disclosure of connections to parties in the Fletcher
16 International, Ltd. case and the failure to disclose other
17 connections and relationships, leave this trustee inappropriate
18 to continue in her position.

19 I don't believe that was addressed by Mr. Hines (sic)
20 or Mr. Morrissey but the record is surprisingly clear about
21 these conflicts and as we've discussed before, when I sought to
22 compel the various fiduciaries to honor their obligations, the
23 documentary evidence shows that there are relationships that at
24 a minimum should be disclosed so that this Court has the
25 ability to decide whether or not a fiduciary is disinterested.

1 That's all I have. Thank you, Your Honor.

2 THE COURT: Okay.

3 Mr. Muho?

4 MR. MUHO: Since Buddy just came on, I just want to
5 pick up on something that he put on in his -- in his letter to
6 the Court. He mentioned, among others, which have in fact been
7 actively attempting to undermine my efforts to hold them
8 accountable. He mentioned D.E. Shaw. Mr. D.E. Shaw.
9 Unbeknownst to the Court, I'm certain, is that Mr. D.E. Shaw is
10 a co-director with a Mr. Constantino "Tino" Argimon, of a
11 significant large hedge fund in Canada and Mr. Argimon has an
12 interest by fact that D.E. Shaw is a party-of-interest and (B)
13 because Mr. Argimon is the husband of Analisa Torres, an
14 unappointed judge to the case that found the default judgment
15 against me for being a thief.

16 That is something that (A) should have been disclosed
17 to the Court, given that my research was nothing more than
18 Google, (B) it's something that I am attacking later on in this
19 day and I'm happy to provide you with that motion if necessary
20 at right -- at this moment, but it's treasonous, in my opinion,
21 to find that a frivil -- somebody asking for electricity -- of
22 filing a motion to dismiss a TRO for electricity and for water
23 is frivolous, which as she ruled my motion but that's her --
24 that's her decision and it would have been nice if she would
25 have actually been appointed by the clerk, which she wasn't, as

1 I pointed out in my most recent filing.

2 But let's go back to a disinterested trustee which
3 she's far from.

4 THE COURT: You're rearguing matters or raising new
5 matters that go beyond the scope of reply, Mr. Muho.

6 MR. MUHO: The interest of the trustee?

7 THE COURT: Would you limit yourself to what I heard
8 from the opposing lawyers today in oral argument?

9 MR. MUHO: I'm sorry, I --

10 THE COURT: Not points that you could have made or did
11 make in your papers at the outset.

12 MR. MUHO: I apologize. I'm just not a lawyer.

13 A disinterested trustee would have immediately picked
14 up the investigation or at least asked me for the documents
15 that prove Citco and part -- and Fletcher, were co-managing
16 Soundview Elite and an entity called Global Hawk, which then
17 repaid 100 million dollars to a company called Corsair Capital.
18 That's an alter ego for JPMorgan's investment firm.

19 Those three parties have deep pockets and I have a
20 case against them which I initiated but couldn't pursue due to
21 actions beyond my control. A disinterested trustee would have
22 -- would have hawked after that case, would not have
23 investigated someone who is registered with the SEC as an
24 investment advisor, took two million dollar. At best --
25 pursuant to actually, I may add, a court order -- a court

1 request by Judge Vaughn in Delaware, that I find -- I go get
2 money and hire a lawyer which is what I did and what Mr. Harvey
3 said that Mr. Muho, you know, is blowing money away on hiring
4 lawyers to fight us. But so -- so that's what a disinterested
5 trustee --

6 I have done more than 10,000 -- I mean a -- I've spent
7 a year without holidays, night or day or sleep, investigating
8 all of this. For this trustee after no -- after I told her
9 that to not to completely ignore me and to come here and say
10 that we're investigating a child, who at best -- who, you know,
11 is not around hiding things and has current -- already
12 contacted the FBI and every other authority in the world who
13 lives in -- as the record shows, is sort of -- sort of -- sort
14 of damning evidence, she's not interested -- disinterested.

15 Apart, if you noticed, I did pay 30,000 dollars to her
16 after April, in mid-April, for her services to represent the
17 valuation company that Buddy used or the valuation Buddy --
18 that Buddy had. That alone -- and I'm sure she -- she didn't
19 jump at disclosing that one, means that she may not be
20 disinterested.

21 I -- and I'm sure that there exists a wall between,
22 you know, separate cases but I've seen that wall broken so many
23 times. I have been robbed by lawyers. So I've see -- there's
24 significant reasons to doubt her interests.

25 Lastly, for her to say res judicata to two judgments;

1 one of them was a default judgment in New York by Analisa
2 Torres, Argimon's wife. The second one was a Delaware
3 judgment, I wasn't even made a party to. Judge Vaughn actually
4 and this is sort of a joke, wanted to punch me in the face when
5 I -- when I tried earlier this year to join the case. He said,
6 "You're not a party. You weren't made a party. Get out of
7 here before they preclude you going forward."

8 So -- and that's the same judge that denied Buddy
9 summary judgment which forced Buddy and Co. to come here and
10 ask for their money through a court order for, you know, using
11 the bankruptcy court's power.

12 Now, so if the investigation is on me for two million,
13 which they already have 500, then my indemnification because --

14 THE COURT: I take it it's not disputed that you did
15 take the two million dollars.

16 MR. MUHO: It is absolutely not disputed that I
17 transferred two million dollars from Soundview Elite at the
18 time, Leveraged Hawk, to Leveraged Hawk. HSBC -- HSBC -- HSBC
19 Legal Department reviewed the documents for a month. I was
20 ready to sue them. At that time, they said we agree with your
21 documents. We have reviewed them. You know, we have a legal
22 team also. I mean it's HSBC. It's not --

23 THE COURT: Okay. Continue, please. Continue but
24 also wind it up. You've been speaking a lot longer than your
25 opponents did.

1 MR. MUHO: I apologize but I -- and you know what?
2 I've -- oh, the Fletcher and the Soundview matter. I -- that
3 there was a lot of improprieties in Fletcher and Soundview.
4 Well, who else but the person who said hey, this improprieties
5 that I've seen here require me to go against Fletcher and
6 Soundview old -- Soundview's old management in order to pursue
7 the people who robbed them at a ginormous interest to myself,
8 should I succeed but try succeeding against every best law firm
9 in the world, that was the --

10 So as far as pursue, I have a bigger stake in holding
11 them accountable. I have a personal stake in holding them
12 accountable. And I have my life is committed to a stake in
13 holding them accountable.

14 So if a disinterested trustee, even if she was, which
15 she is not, you know, given her -- her arguments, you know --
16 and I should add the Leveraged Hawk means that they're -- the
17 Leveraged Hawk merger means that there are no debtors and
18 bankruptcy cannot create a debtor -- cannot create a person. A
19 person could file for bankruptcy. There are no persons since
20 Leveraged Hawk merger completely eviscerated the debtors. So
21 whoever filed -- whatever -- whatever alien sort of formed,
22 filed for bankruptcy needs to be eviscerated. And I, you know
23 -- sorry.

24 THE COURT: Okay. Thank you.

25 Everybody sit in place for a minute. All right.

1 In this contested matter in the jointly administered
2 Chapter 11 case of the Soundview entities, Mr. Muho moves
3 pursuant to Section 305 of the Code to dismiss the case and
4 also moves relying on what I believe is 1105 of the Code, to
5 remove the trustee. Each of those motions is denied and the
6 following are the bases for this determination.

7 Turning first to the 305 motion, a 305 dismissal
8 requires a finding that the dismissal is in the interest of
9 both the debtor and the creditors. In this case, I can find
10 that it's neither. The debtor is, at least in this instance,
11 obligated to meet its creditors before it can look out for its
12 own welfare. I have some difficulty seeing how I could even
13 find that a dismissal is in the interest of the debtor.

14 But more fundamentally, a dismissal is not in the
15 interest of the creditors who are sitting unpaid while certain
16 people, most significantly Mr. Fletcher and Mr. Muho point
17 fingers at each other and whose recoveries must await the
18 liquidation of the assets of this estate and the recovery of
19 assets that may have been taken out of the estate which
20 include, among other things, the two million dollars that Mr.
21 Muho has acknowledged he took out, albeit for reasons that he
22 contends were appropriate.

23 The motion, if it had other merit, would be brought
24 under 1112 not under 305 but even that is inappropriate because
25 that requires a showing of cause for the dismissal of the case.

1 Here, cause has not been shown and the trustee has pointed out
2 with great force the applicability of collateral estoppel and
3 law of the case and also, laches. Although I think it's
4 probably best for me to rearrange them in terms of their
5 conceptual order.

6 Turning first to law of the case, I previously ruled
7 that this case was properly filed. And I did that in a written
8 opinion and I did it based on uncontested facts that the people
9 who based on affidavits shown to me at the time had the
10 authority to file the case which at the time were Mr. Fletcher
11 and Mr. Ladner, if I am not mistaken, had done so.

12 Now the liquidators had differed with that conclusion
13 but I ruled on it and that issue is behind us. I expressly
14 gave Mr. Muho an opportunity to be heard on the law of the case
15 finding and while he said certain things, none of it went to
16 the law of the case.

17 Then we turn to laches which is probably the strongest
18 reason for both not dismissing the case and denial of the
19 motion to dismiss the trustee because this case has gone on for
20 months during which investigation has gone on, during which
21 creditors have rightfully relied on the ability of the trustee
22 to do her job and all indications are that the trustee is doing
23 her job.

24 The real problem I have with your position, Mr. Muho,
25 and to a lesser extent but still to Mr. Fletcher's joinder, is

1 that when you're the target of an action taken by a trustee,
2 you can't target the guy or woman who is acting on behalf of
3 the estate who is going after you. I mean the purpose of
4 trustees is to engage in their independent professional
5 judgment as to whether claims should be asserted. Those claims
6 can, of course, be controverted or fought on the merits but
7 people who are the targets of the litigation brought by a
8 trustee have to make very strong showings that their accuser is
9 acting improperly. Otherwise, the whole system would collapse.

10 So when people who are the targets of litigation
11 profess to be speaking for the best interest of the estate when
12 trustees, either Chapter 7 trustees or Chapter 11 trustees or
13 trustees for litigation trusts formed under plans, are going
14 after them or by analogy the creditors' committees of the world
15 when they try to bring claims under SDN authority, a court
16 looks at that stuff with a grain of salt.

17 And then we have the collateral estoppel issues to
18 which once again Mr. Muho did not respond.

19 So for all of those reasons, I'm denying the motion to
20 dismiss the case under 305. I would have denied it if the
21 motion had been brought under 1112 and I am denying the motion
22 to fire the trustee. As Mr. Morrissey pointed out in oral
23 argument, the trustee is very much needed to protect the
24 interest of this estate, just as for the same reasons that he
25 asked the trustee to be appointed in the first place.

1 The trustee is to settle an order in accordance with
2 the foregoing.

3 MR. HINE: Yes, Your Honor.

4 THE COURT: Do we have any further business in the
5 Soundview cases? Yes, hearing none, then we're going to move
6 on Adoni Group. Everybody who was here solely on Soundview is
7 excused.

8 MR. HINE: Your Honor, may I be heard?

9 THE COURT: Mr. Hine?

10 MR. HINE: Could I ask one --

11 THE COURT: Come to a mic, would you please?

12 MR. HINE: Could I ask for one point of clarification.

13 THE COURT: Everybody sit down for a moment.

14 MR. HINE: I apologize, Your Honor. Is the joinder
15 motion denied, as well, Mr. Fletcher's?

16 THE COURT: I had understood the joinder motion to
17 be -- you mean Mr. Fletcher's?

18 MR. HINE: Yeah.

19 THE COURT: I had understood that to be mainly
20 disagreeing with Mr. Muho but I don't remember any affirmative
21 relief that was duly brought before me. What was that?

22 MR. HINE: I don't believe he did, Your Honor. He
23 made some allegations about the trustee and so we wanted to --

24 THE COURT: Mr. Hine, everybody's making all sorts of
25 accusations about the trustee. Everybody's making accusations

1 about everybody else. I'm not ruling on anything that is not
2 before me in the form of an appropriate motion.

3 MR. HINE: Thank you, Your Honor.

4 THE COURT: Okay.

5 (Whereupon these proceedings were concluded at 10:55 AM)

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4 RULINGS

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	Page	Line
6 Motion to dismiss trustee and case denied	18	5

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2 C E R T I F I C A T I O N

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4 I, Linda Ferrara, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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9 *Linda Ferrara*

10 August 7, 2014

11

12 LINDA FERRARA

DATE

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25

A	11:11 allegations (5) 4:21;11:1,3,5; 20:23 alleging (1) 9:11 almost (1) 7:6 alone (1) 14:18 alter (5) 6:2;7:4,4,5;13:18 Although (1) 18:3 among (2) 12:6;17:20 amounts (1) 6:5 ample (1) 9:19 Analisa (2) 12:13;15:1 analogy (1) 19:14 apart (2) 5:1;14:15 apologize (3) 13:12;16:1;20:14 appear (1) 6:20 appearance (1) 8:23 appearances (1) 4:3 appeared (2) 5:24;6:20 applicability (1) 18:2 appoint (1) 11:3 appointed (2) 12:25;19:25 appointment (1) 10:1 appropriate (3) 5:12;17:22;21:2 April (1) 14:16 Argimon (3) 12:10,11,13 Argimon's (1) 15:2 argued (1) 9:9 argument (2) 13:8;19:23 arguments (1) 16:15 around (1) 14:11 asserted (1) 19:5 assets (3)	6:5;17:18,19 attacking (1) 12:18 attempt (1) 9:16 attempting (1) 12:7 attorneys (1) 8:13 authority (4) 8:24;14:12;18:10; 19:15 authorized (1) 7:16 await (1) 17:17 away (1) 14:3	bono (1) 8:9 both (3) 5:20;17:9;18:18 brief (1) 9:9 briefs (1) 4:14 bring (1) 19:15 broken (1) 14:22 brought (4) 17:23;19:7,21; 20:21 Buddy (10) 6:14,18,20;7:7; 12:4;14:17,17,18; 15:8,9 Buddy's (1) 6:25 business (1) 20:4 buy (1) 6:22	child (2) 8:14;14:10 Citco (10) 6:2,2,7,7,12,12,23, 24;7:7;13:15 claims (5) 7:19,20;19:5,5,15 clarification (1) 20:12 clear (1) 11:20 clerk (1) 12:25 Co (1) 15:9 Code (3) 4:16;17:3,4 co-director (1) 12:10 collapse (1) 19:9 collateral (4) 5:2;8:5;18:2;19:17 collect (1) 9:17 co-managing (1) 13:15 coming (1) 7:22 comment (1) 10:14 comments (2) 4:4;10:21 committed (2) 8:20;16:12 committees (1) 19:14 community (4) 4:24;5:3;8:8,19 company (2) 13:17;14:17 compel (1) 11:22 completely (2) 14:9;16:20 conceptual (1) 18:5 concern (1) 5:1 conclude (1) 11:7 concluded (1) 21:5 conclusion (1) 18:12 confirm (1) 11:13 conflicts (1) 11:21 connections (2) 11:15,17 consequently (1) 7:1
B	back (3) 7:6,10;13:2 bags (1) 8:15 Ball (2) 4:8;10:5 bankruptcy (5) 7:25;15:11;16:18, 19,22 banks (1) 7:3 based (2) 18:8,9 bases (1) 17:6 basis (1) 9:14 bat (1) 5:4 behalf (2) 7:16;19:2 behind (1) 18:13 benefit (1) 11:4 best (6) 8:22;13:24;14:10; 16:8;18:4;19:11 beyond (3) 6:1;13:5,21 big (1) 7:8 bigger (1) 16:10 billion (1) 7:2 blocking (2) 7:21,22 blowing (1) 14:3 Boggs (1) 8:18	C	called (3) 8:19;13:16,17 came (2) 8:24;12:4 can (7) 8:9,16;9:4;10:16; 17:9,11;19:6 Canada (1) 12:11 Capital (1) 13:17 carrying (1) 8:15 case (30) 5:5,6;7:5,18;8:5, 17:9;1,4,5;10:6;11:4, 6,16;12:14;13:20,22; 15:5;17:2,3,9,25; 18:3,6,7,10,14,16,18, 19;19:20 cases (3) 11:2;14:22;20:5 cause (2) 17:25;18:1 certain (3) 12:9;17:15;18:15 chance (1) 5:15 Chapter (7) 10:1,6,7;11:2; 17:2;19:12,12 characterized (1) 11:1 Chevron (3) 8:17,17,21	

considers (1)		11:15	19:12	6:24
5:12	D	discovery (1)	electricity (2)	extraordinary (1)
Constantino (1)		10:24	12:21,22	11:3
12:10		discussed (1)	element (1)	F
contacted (1)		11:21	11:10	
14:12		disgusting (1)	Elite (3)	
contend (1)		9:2	8:10;13:16;15:17	
7:17		disinterested (9)	else (3)	
contended (1)		11:12,25;13:2,13,	6:14;16:4;21:1	
7:14		21:14;4,14,20;16:14	emphasized (1)	
contends (1)		11:14	5:19	
17:22		dismiss (4)	engage (1)	
contested (1)		12:22;17:3;18:19;	19:4	
17:1		19:20	Engra (1)	
continue (4)		dismissal (6)	7:1	
10:6;11:18;15:23,		4:17;17:7,8,13,14,	entities (4)	
23		25	7:7;10:3,3;17:2	
contradict (1)		dismissing (1)	entity (2)	
10:19		18:18	6:15;13:16	
control (2)		disputed (2)	equity (2)	
6:19;13:21		15:14,16	5:19,19	
controverted (1)		distinguish (1)	estate (8)	
19:6		7:6	7:11,19;9:18;	
Corinne (1)		district (1)	17:18,19;19:3,11,24	
4:8		8:20	estates (1)	
corporate (1)		documentary (1)	4:9	
6:11		11:23	estoppel (4)	
Corsair (1)		documents (4)	5:3;8:5;18:2;19:17	
13:17		7:5;13:14;15:19,	even (8)	
counsel (1)		21	6:20;7:9,20;9:5;	
10:25		dog (1)	15:3;16:14;17:12,24	
course (1)		5:14	everybody (5)	
19:6		dollar (2)	4:3;16:25;20:6,13;	
COURT (44)		7:2;13:24	21:1	
4:2,6,10,13;6:1,3,		dollars (7)	everybody's (2)	
4:7;14;8:4,6,7,7,13;		4:23;9:17;13:17;	20:24,25	
9:3,6,10,18,22;10:8,		14:15;15:15,17;	everywhere (1)	
15:11;14,24;12:6,		17:20	7:4	
9,17;13:4,7,10,25,		done (3)	evidence (2)	
25:15;10,14,23;		7:11;14:6;18:11	11:23;14:14	
16:24;19:15;20:4,9,		doubt (2)	eviscerated (2)	
11,13,16,19,24;21:4		6:1;14:24	16:20,22	
court's (1)		down (4)	exactly (1)	
15:11		4:3;13;9:20;20:13	10:5	
create (2)		due (1)	excused (1)	
16:18,18		13:20	20:7	
created (2)		duly (1)	exist (2)	
6:15,24		20:21	6:13,15	
creating (1)		during (3)	existed (1)	
7:5		10:23;18:20,20	7:7	
creditor (7)		E	exists (1)	
4:24;5:3,23,23;			14:21	
7:9,13,17		earlier (2)	expectation (1)	
creditors (9)		8:10;15:5	8:11	
4:18,20;5:18,21;		efforts (2)	experts (1)	
6:20;17:9,11,15;		9:16;12:7	6:11	
18:21		ego (2)	expressly (1)	
creditors' (1)		6:2;13:18	18:13	
19:14		egos (3)	extensive (2)	
current (1)		7:4,4,5	10:24,24	
14:11		either (1)	extent (2)	
			5:12;18:25	
			extra (1)	
considers (1)		11:15	19:12	6:24
5:12	D	discovery (1)	electricity (2)	extraordinary (1)
Constantino (1)		10:24	12:21,22	11:3
12:10		discussed (1)	element (1)	F
contacted (1)		11:21	11:10	
14:12		disgusting (1)	Elite (3)	
contend (1)		9:2	8:10;13:16;15:17	
7:17		disinterested (9)	else (3)	
contended (1)		11:12,25;13:2,13,	6:14;16:4;21:1	
7:14		21:14;4,14,20;16:14	emphasized (1)	
contends (1)		11:14	5:19	
17:22		dismiss (4)	engage (1)	
contested (1)		12:22;17:3;18:19;	19:4	
17:1		19:20	Engra (1)	
continue (4)		dismissal (6)	7:1	
10:6;11:18;15:23,		4:17;17:7,8,13,14,	entities (4)	
23		25	7:7;10:3,3;17:2	
contradict (1)		dismissing (1)	entity (2)	
10:19		18:18	6:15;13:16	
control (2)		disputed (2)	equity (2)	
6:19;13:21		15:14,16	5:19,19	
controverted (1)		distinguish (1)	estate (8)	
19:6		7:6	7:11,19;9:18;	
Corinne (1)		district (1)	17:18,19;19:3,11,24	
4:8		8:20	estates (1)	
corporate (1)		documentary (1)	4:9	
6:11		11:23	estoppel (4)	
Corsair (1)		documents (4)	5:3;8:5;18:2;19:17	
13:17		7:5;13:14;15:19,	even (8)	
counsel (1)		21	6:20;7:9,20;9:5;	
10:25		dog (1)	15:3;16:14;17:12,24	
course (1)		5:14	everybody (5)	
19:6		7:2;13:24	4:3;16:25;20:6,13;	
COURT (44)		dollar (2)	21:1	
4:2,6,10,13;6:1,3,		7:2;13:24	everybody's (2)	
4:7;14;8:4,6,7,7,13;		dollars (7)	20:24,25	
9:3,6,10,18,22;10:8,		4:23;9:17;13:17;	everywhere (1)	
15:11;14,24;12:6,		14:15;15:15,17;	7:4	
9,17;13:4,7,10,25,		17:20	evidence (2)	
25:15;10,14,23;		done (3)	11:23;14:14	
16:24;19:15;20:4,9,		7:11;14:6;18:11	eviscerated (2)	
11,13,16,19,24;21:4		doubt (2)	16:20,22	
court's (1)		6:1;14:24	exactly (1)	
15:11		down (4)	10:5	
create (2)		4:3;13;9:20;20:13	excused (1)	
16:18,18		13:20	20:7	
created (2)		duly (1)	exist (2)	
6:15,24		20:21	6:13,15	
creating (1)		during (3)	existed (1)	
7:5		10:23;18:20,20	7:7	
creditor (7)		E	exists (1)	
4:24;5:3,23,23;			14:21	
7:9,13,17		earlier (2)	expectation (1)	
creditors (9)		8:10;15:5	8:11	
4:18,20;5:18,21;		efforts (2)	experts (1)	
6:20;17:9,11,15;		9:16;12:7	6:11	
18:21		ego (2)	expressly (1)	
creditors' (1)		6:2;13:18	18:13	
19:14		egos (3)	extensive (2)	
current (1)		7:4,4,5	10:24,24	
14:11		either (1)	extent (2)	
			5:12;18:25	
			extra (1)	

5:16;10:12;17:7; 18:6;19:25	Gerti (1) 4:5	5:19,20 holding (3) 16:10,11,13	interest (12) 4:18,24;5:18,21; 12:12;13:6;16:7; 17:8,13,15;19:11,24	14:19
five-day (1) 10:23	ginormous (1) 16:7	holidays (1) 14:7	justifiably (1) 5:4	K
Fletcher (15) 6:21;10:2,13,13, 15,17,18,22;11:15; 13:15;16:2,3,5; 17:16;18:10	given (2) 12:17;16:15	Honor (19) 4:5,7;5:17;8:6,25; 9:1,8,21,25;10:13, 18,23;11:22;12:1; 20:3,8,14,22;21:3	interested (1) 14:14	
Fletcher's (3) 18:25;20:15,17	Global (1) 13:16	HSBC (4) 15:18,18,18,22	interests (1) 14:24	key (1) 6:6
focus (2) 7:9,12	goes (1) 8:23	husband (1) 12:13	International (1) 11:16	L
following (1) 17:6	Google (1) 12:18	hypothetical (1) 7:21	into (2) 9:4,12	laches (4) 5:3;8:5;18:3,17
force (1) 18:2	grain (1) 19:16		investigated (5) 10:4,22;11:8,9; 13:23	lack (2) 8:23;11:14
forced (1) 15:9	great (1) 18:2		investigating (3) 9:12;14:7,10	Ladner (1) 18:11
foregoing (1) 20:2	Group (3) 6:2,2;20:6		investigation (3) 13:14;15:12;18:20	large (1) 12:11
foresee (1) 6:6	guards (2) 7:21,22		investment (2) 13:18,24	Lastly (1) 14:25
form (1) 21:2	guy (1) 19:2		investors (2) 6:16;7:1	later (1) 12:18
formed (2) 16:21;19:13			involving (2) 10:2,22	law (7) 5:6;8:5;16:8;18:3, 6,14,16
forward (1) 15:7			Islander (1) 7:2	lawyer (3) 8:2;13:12;14:2
fought (1) 19:6			issue (3) 4:25;5:8;18:13	lawyers (3) 13:8;14:4,23
found (4) 4:23;8:20,20; 12:14			issues (2) 8:5;19:17	leaders (1) 6:11
Fraud (4) 8:6,6,7,21			Izzy (2) 7:1,2	least (2) 13:14;17:10
freezing (1) 8:11				leave (1) 11:17
frivol (1) 12:21				lectern (1) 5:16
frivolous (1) 12:23				Legal (2) 15:19,21
full (1) 7:24				less (3) 7:23,23;8:2
fund (1) 12:11				lesser (1) 18:25
fundamentally (1) 17:14				letter (1) 12:5
Funds (2) 6:22;7:2				Leveraged (5) 15:18,18;16:16,17, 20
further (2) 11:8;20:4				lie (1) 9:2
				life (2) 4:19;16:12
				limit (1) 13:7
				liquidation (1) 17:18
G				liquidators (2) 5:7;18:12
game (1) 6:12				litigation (3) 19:7,10,13
gave (1) 18:14				little (2) 6:10;8:14
general (1) 10:3				
Gentlemen (1) 4:13				

lives (1) 14:13	merit (1) 17:23	Muho's (1) 10:19	14:19;15:1,2;20:10, 12	pay (2) 8:11;14:15
longer (3) 8:9,12;15:24	merits (1) 19:6	multiple (1) 10:25	only (3) 5:23;6:20;9:2	Peaton (1) 8:18
look (1) 17:11	mic (1) 20:11	must (2) 5:22;17:17	opinion (3) 8:1;12:20;18:8	Pension (1) 6:22
looking (2) 4:20;9:12	mid-April (1) 14:16	myself (1) 16:7	opponents (2) 5:2;15:25	people (5) 16:7;17:16;18:8; 19:7,10
looks (1) 19:16	million (9) 4:22;6:21;9:17; 13:17,24;15:12,15, 17;17:20		opportunity (1) 18:14	percent (4) 6:16,24,25;7:3
lose (2) 7:10,18	minimum (1) 11:24		opposed (1) 5:7	person (4) 11:12;16:4,18,19
lost (1) 5:8	minute (1) 16:25		opposing (1) 13:8	personal (1) 16:11
lot (4) 8:18,18;15:24; 16:3	mistaken (1) 18:11		oral (2) 13:8;19:22	personally (1) 5:14
Louisiana (1) 6:22	moment (2) 12:20;20:13		order (6) 6:15;13:25;15:10; 16:6;18:5;20:1	persons (1) 16:19
lowered (1) 6:25	money (3) 14:2,3;15:10		others (3) 7:2;11:7;12:6	pick (1) 12:5
Ltd (5) 5:24,25;6:2,2; 11:16	month (1) 15:19		Otherwise (1) 19:9	picked (1) 13:13
M				
main (1) 5:16	months (1) 18:20		out (10) 4:20;8:8;9:10; 13:1;15:6;17:11,19, 21;18:1;19:22	place (2) 16:25;19:25
mainly (1) 20:19	more (8) 5:21,22,22;6:10; 9:16;12:17;14:6; 17:14		outset (1) 13:11	plans (1) 19:13
maintain (1) 6:15	MORRISSEY (8) 4:11,11;5:13;9:23, 25;10:11;11:20; 19:22		over (2) 9:2,4	players (1) 8:18
making (2) 20:24,25	Morrissey's (2) 10:21;11:12		overlooked (1) 5:21	please (5) 5:16;7:14;8:4; 15:23;20:11
management (1) 16:6	most (3) 11:2;13:1;17:16		overriding (1) 5:1	plus (1) 8:23
many (2) 11:6;14:22	motion (16) 4:17;8:14;9:15; 11:14;12:19,22,23; 17:7,23;18:19;19:19, 21,21;20:15,16;21:2		own (1) 17:12	pockets (1) 13:19
mark (1) 7:3	motions (2) 11:10;17:5		owner (1) 6:20	point (3) 9:10;17:16;20:12
massive (2) 8:21,21	mountains (1) 5:25		owners (1) 6:18	pointed (3) 13:1;18:1;19:22
matter (2) 16:2;17:1	move (2) 10:7;20:5		P	
matters (2) 13:4,5	moved (1) 9:25			
may (7) 5:19,20;10:12; 13:25;14:19;17:19; 20:8	moves (2) 17:2,4			
mean (8) 6:9,9;8:8;9:4;14:6; 15:22;19:3;20:17	much (4) 5:22,22,22;19:23			
means (5) 6:12;10:9;14:19; 16:16,17	MUHO (30) 4:5,5,6,15;5:16,17; 7:14,18;8:6;9:11,17;			
meet (1) 17:11	10:9,16,16;12:3,4; 13:5,6,9,12;14:3;			
mentioned (2) 12:6,8	15:16;16:1;17:2,16, 21;18:14,24;19:18;			
merger (2) 16:17,20	20:20			

4:15;18:4,17 problem (1) 18:24 proceedings (2) 5:9;21:5 production (1) 10:24 profess (1) 19:11 professional (1) 19:4 proof (2) 5:25;8:23 properly (1) 18:7 propriety (3) 5:5,7,9:13 protect (1) 19:23 prove (3) 10:25;11:5;13:15 provide (1) 12:19 punch (1) 15:4 purpose (1) 19:3 pursuant (2) 13:25;17:3 pursue (3) 13:20;16:6,10 pushed (1) 7:3 put (1) 12:5	reasons (4) 14:24;17:21; 19:19,24 recall (1) 10:23 recent (1) 13:1 recently (1) 8:17 recognize (1) 7:24 record (4) 4:22;10:20;11:20; 14:13 recoveries (1) 17:17 recovery (1) 17:18 registered (1) 13:23 reiterate (1) 9:9 relationships (2) 11:17,23 relied (1) 18:21 relief (1) 20:21 rely (1) 9:20 relying (3) 4:16;5:4;17:4 remedy (1) 11:3 remember (1) 20:20 removal (2) 4:22,25 remove (1) 17:5 removing (2) 4:19;9:14 repaid (1) 13:17 reply (2) 10:9;13:5 reporting (1) 7:3 represent (2) 4:8;14:16 req (1) 6:16 realize (1) 11:12 rearguing (1) 13:4 rearrange (1) 18:4 reason (5) 7:12;10:1,1,7; 18:18 reasonable (3) 6:1;11:6,7	respected (1) 5:9 respond (3) 5:11;10:10;19:18 response (1) 10:21 responsibility (1) 11:13 retaliate (1) 9:16 reviewed (2) 15:19,21 Richard (1) 4:11 right (12) 4:6,10,13;8:3,4; 9:6;10:8,9,10,15; 12:20;16:25 rightfully (1) 18:21 rights (1) 5:13 robbed (2) 14:23;16:7 ruled (4) 5:6;12:23;18:6,13 ruling (1) 21:1 run (1) 8:8	services (1) 14:16 settle (1) 20:1 Shaw (4) 12:8,8,9,12 shift (2) 6:11,11 show (1) 5:25 showing (1) 17:25 showings (2) 5:2;19:8 shown (2) 18:1,9 shows (3) 10:20;11:23;14:13 sic (4) 6:5;7:25;8:18; 11:19 side (1) 7:24 significant (5) 6:4,5;7:19;12:11; 14:24 significantly (1) 17:16 sit (5) 4:3,13;9:20;16:25; 20:13 sits (1) 8:2 sitting (1) 17:15 sleep (1) 14:7 solely (1) 20:6 somebody (2) 8:15;12:21 someone (1) 13:23 sorry (2) 13:9;16:23 sort (5) 14:13,13,13;15:4; 16:21 sorts (1) 20:24 sought (1) 11:21 Soundview (13) 4:2,8;8:10;10:3, 25:13;16;15:17; 16:2,3,6;17:2;20:5,6 Soundview's (1) 16:6 speaking (2) 15:24;19:11 spent (1) 14:6 stake (4)	6:25;16:10,11,12 stand (1) 10:16 standing (1) 7:15 start (1) 11:1 state (1) 6:5 statements (1) 10:19 statutory (1) 5:13 steal (1) 7:25 still (1) 18:25 stolen (1) 6:19 stomach (1) 8:3 street (1) 9:3 strong (2) 5:2;19:8 stronger (1) 4:15 strongest (1) 18:17 stuff (2) 4:21;19:16 subordinate (1) 7:11 succeed (1) 16:8 succeeding (1) 16:8 sue (1) 15:20 summary (1) 15:9 supplement (1) 5:11 supplier (2) 8:21,22 sure (2) 14:18,21 surprisingly (1) 11:20 system (1) 19:9
R		salt (1) 19:16 same (3) 5:1;15:8;19:24 saw (2) 8:14,14 scope (1) 13:5 SDN (1) 19:15 se (1) 4:5 SEC (1) 13:23 second (2) 4:25;15:2 secondary (2) 6:16;7:1 secret (1) 5:9 Section (2) 4:16;17:3 sections (1) 4:16 seeing (1) 17:12 separate (1) 14:22 service (1) 8:8		T

7:3		William (1)	
terms (1)	U	4:7	
18:4		wind (1)	
thief (1)		15:24	
12:15		without (9)	
thoroughly (1)		8:9,11,24,24,24, 25,25,25;14:7	
11:9		woman (1)	
though (1)		19:2	
6:21		word (1)	
thousand (1)		8:22	
4:23		world (3)	
three (1)		14:12;16:9;19:14	
13:19		written (1)	
times (1)		18:7	
14:23		wrote (1)	
Tino (1)		5:18	
12:10		Y	
today (1)			
13:8		year (2)	
told (2)		14:7;15:5	
6:13;14:8		years (1)	
took (3)		4:23	
9:17;13:24;17:21		York (2)	
Torres (2)		8:20;15:1	
12:13;15:2		1	
Trading (3)			
6:12,23,25		10,000 (1)	
transactions (4)		14:6	
9:13;10:2,22;11:8		10:55 (1)	
transferred (1)		21:5	
15:17		100 (1)	
treasonous (1)		13:17	
12:20		11 (6)	
trial (3)		10:1,6,7;11:2; 17:2;19:12	
10:23;11:4,5		valuation (2)	
tried (2)		14:17,17	
11:9;15:5		various (3)	
TRO (1)		10:19;11:3,22	
12:22		Vaughn (2)	
trustee (33)		14:1;15:3	
4:8,12,19,25;5:4; 6:14;9:12;10:1,7; 11:4,11,13,17;13:2, 6,13,21;14:5,8; 16:14;17:5;18:1,19, 21,22;19:1,8,22,23, 25;20:1,23,25		view (1)	
trustees (5)		9:15	
19:4,12,12,12,13		W	
trusts (1)			
19:13		wall (2)	
try (2)		14:21,22	
16:8;19:15		water (1)	
trying (1)		12:22	
9:18		welfare (1)	
turn (2)		17:12	
8:4;18:17		weren't (2)	
Turning (2)		5:9;15:6	
17:7;18:6		Whereupon (1)	
two (9)		21:5	
4:16,22;9:17; 13:24;14:25;15:12, 15,17;17:20		whole (1)	
		19:9	
		whose (1)	
		17:17	
		wife (1)	
		15:2	
			5
			500 (1)
			15:13
7:3		William (1)	
terms (1)	U	4:7	
18:4		wind (1)	
thief (1)		15:24	
12:15		without (9)	
thoroughly (1)		8:9,11,24,24,24, 25,25,25;14:7	
11:9		woman (1)	
though (1)		19:2	
6:21		word (1)	
thousand (1)		8:22	
4:23		world (3)	
three (1)		14:12;16:9;19:14	
13:19		written (1)	
times (1)		18:7	
14:23		wrote (1)	
Tino (1)		5:18	
12:10		Y	
today (1)			
13:8		year (2)	
told (2)		14:7;15:5	
6:13;14:8		years (1)	
took (3)		4:23	
9:17;13:24;17:21		York (2)	
Torres (2)		8:20;15:1	
12:13;15:2		1	
Trading (3)			
6:12,23,25		10,000 (1)	
transactions (4)		14:6	
9:13;10:2,22;11:8		10:55 (1)	
transferred (1)		21:5	
15:17		100 (1)	
treasonous (1)		13:17	
12:20		11 (6)	
trial (3)		10:1,6,7;11:2; 17:2;19:12	
10:23;11:4,5		valuation (2)	
tried (2)		14:17,17	
11:9;15:5		various (3)	
TRO (1)		10:19;11:3,22	
12:22		Vaughn (2)	
trustee (33)		14:1;15:3	
4:8,12,19,25;5:4; 6:14;9:12;10:1,7; 11:4,11,13,17;13:2, 6,13,21;14:5,8; 16:14;17:5;18:1,19, 21,22;19:1,8,22,23, 25;20:1,23,25		view (1)	
trustees (5)		9:15	
19:4,12,12,12,13		W	
trusts (1)			
19:13		wall (2)	
try (2)		14:21,22	
16:8;19:15		water (1)	
trying (1)		12:22	
9:18		welfare (1)	
turn (2)		17:12	
8:4;18:17		weren't (2)	
Turning (2)		5:9;15:6	
17:7;18:6		Whereupon (1)	
two (9)		21:5	
4:16,22;9:17; 13:24;14:25;15:12, 15,17;17:20		whole (1)	
		19:9	
		whose (1)	
		17:17	
		wife (1)	
		15:2	
			5
			500 (1)
			15:13